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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,894

Applicant(s)

DATTA ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7-5-05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6 and 9-22 is/are pending in the application.
- 4a) Of the above claim(s) 3-6, 11-14 and 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 9, 10, 15-17 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2-14-05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-5-05 has been entered.

It is noted that Applicant amended the claims to include claim 22 which is the combination of previously considered claim 1 and withdrawn claims 7-8 drawn to the nonelected species, all of which are now cancelled. Since RCEs are to be directed to the same invention as the previous application, such amendment would be noncompliant because none of the independent claims reads on the elected species. However, the election requirement between the species of properties of the first and second fastening materials only set forth Paper No. 5, paragraph 1, lines 5-8 thereof, has been reconsidered and is withdrawn and so claims 22, 2, 9, 10 and 15-17 will be considered on their merits.

Election/Restrictions

2. Claims 3-6, 11-14 and 18-21 still remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Specification

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Contrary to Applicant’s arguments the Figures do not show the fastener engageable into the back waist region.

Description

4. The abstract of the disclosure is objected to because the 1-17-05 abstract still includes grammatical errors on lines 1-4. For example, on line 2, “can be made by having” could be --include-- and on line 4, are words missing? Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: 1) In the 1-17-05 amendment to page 10, line 13, lines 5 and 10 are grammatically incorrect, e.g. “Fig” should be -Figs.-- and “show” should be --show--. 2) In the amendment to page 32, line 17, line 9, “ ’79’ “ should be --79--. 6) Regardless of Applicant’s arguments, the description would be in better form if the side edges which the component 66 extends beyond are described as those of the chassis or combination of elements 28, 42 and 44 not those of the entire diaper or article 20.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. Claims 2, 9-10, 15-17 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 22, are the fastener area and the at least two zones of first and second zones of fastening material one and the same, i.e. how many fastener areas at a minimum are there? Two, i.e. the first zone and the second zone? Three, i.e. the first zone, the second zone and the fastener area?

Claim Language Interpretation

7. “Disposable” is defined as set forth on page 11, lines 19-21. Although not explicitly defined in the specification, “prefastened”, in light of the disclosure at page 2, lines 3-30, and page 8, lines 29-31, is considered as configured when fasteners are attached, i.e. a pant-like configuration, to be pulled up or down over the hips of a wearer, i.e. prior to application to the wearer, but does not require forming of such configuration during the manufacturing process. The terms “multiple property”, and “non-abrasive” have not been specifically defined and therefore will be accorded their common, i.e. dictionary, definition. Thus, “multiple property” is defined as having more than one property, i.e. any property. “Non-abrasive” is defined as not “causing abrasion, harsh; rough”, not “to rub off or wear away by friction”. With regard to the term “mechanical fastening material”, see page 9, lines 2-3, and page 22, lines 7-10. See also response to Arguments section, *infra*.

Claim Rejections - 35 USC § 102/103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 9-10, 15-17 and 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kline et al '908 (and thereby, Batrell '527).

Claim 22, first full paragraph: see Claim Language Interpretation section supra, Figures 1-3, elements 20, 28, 40, 42, 44, 46, 48, 50 and 52, col. 2, first full paragraph, col. 3, lines 11-13, the Summary of the Invention section, col. 17, lines 7-13 and col. 25, line 39-col. 26, line 4.

Claim 22, second full paragraph: It is noted that the engagement ability of the first and second materials has not been claimed, i.e. could be the same, nor is it claimed that the engagement zone is abrasive, i.e. both zones could be nonabrasive, equally so or not. The claim does not require that the one zone be non-abrasive due to only the second material. The claim also does not require that the materials be non-unitary, that each zone includes only the one material, that each zone be entirely covered by the respective material or that the first and second materials have to be different compositions. The zones as claimed could be two zones of the same composition. The claim does not require the zones be nonabrasive or engaging only because the material thereof is of the claimed modulus, i.e. could be so due to other factors, e.g. the zone(s) being positioned so it is nonabrasive or engaging, or other factors in combination with the modulus. It is furthermore noted that the criticality of the combination of materials with specific ranges of moduli of the scope claimed, see discussion supra, has not been disclosed, see page 23, line 9-page 27, line 27. Page 23, line 9-page 27, line 27 disclose the flexure modulus as being merely one of the factors determining the strength of engagement or abrasiveness, but do not set forth the specific strengths or softnesses attained due such factors. Such disclosure merely sets forth that the properties of engagement and abrasiveness of the two fastening

Art Unit: 3761

materials are not the same, i.e. the disclosure sets forth that one material engages stronger than the other and the other is less abrasive than the other due to a number of factors. It is noted that claim 22 does not even set forth this relative relationship of properties between the two fastening materials.

The Kline patent teaches a fastener, 62 or 64, with 202, which has a longitudinal direction, a lateral direction and multiple properties, see, e.g., col. 16, lines 34-62, i.e. different strengths and permeabilities, or col. 17, lines 32-37, and thereby Battrell '527 at col. 2, line 13-17 and col. 7, lines 64-67, i.e. has both the property of shear stress resistance and peel force which can be different in various portions. The Kline patent teaches a fastener area, see, e.g., col. 18, lines 7-9 and col. 22, lines 17-19, i.e. any portion of the fastener. The Kline patent teaches at least one engagement zone of a first mechanical fastening material and at least one engagement zone of a second mechanical fastening material, see, e.g., col. 23, lines 9-13 and col. 17, line 14-col. 18, line 6, i.e. multiple zones of mechanical fastening material, and/or Figure 7, col. 16, lines 30-62, col. 17, line 14-col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17-19, i.e. zones 253 and 254 which can include mechanical fastening material, and/or col. 17, lines 14-18 and 32-37, and thereby Battrell '527 at Figures 1-2, col. 7, line 37-col. 8, line 2, col. 10, lines 61-64, col. 11, lines 53-55, and col. 12, lines 13-24, i.e. mechanical fastening material having different zones due to nonuniform pattern, size, spacing, density and/or composition. The Kline device also teaches at col. 22, lines 9-12 the desire that the fasteners, i.e. all the zones, do not irritate the wearer's skin. Since "irritate" is defined as "to chafe or inflame" and "chafe" is defined as "to wear away or irritate by rubbing", the fasteners are "nonabrasive", see Claim Language Interpretation section supra. Therefore, the Kline et al reference clearly teaches all the

Art Unit: 3761

claimed structure and function except the first and second materials having different specific ranges of flexure modulus. It is noted that the first material range, at a minimum, is required to be merely greater than about the maximum flexural modulus of the second material range, i.e. can be nearly identical. As disclosed by Kline et al/Batrell, see cited portions supra, the fasteners can have first and second zones of different fastening capability but skin friendly with fastener shape, size, material composition, and/or density identical or substantially identical to those set forth in the instant specification. Therefore, it is the Examiner's first position that there is sufficient factual basis (i.e. the structure and function disclosed by Kline/Batrell is identical or substantially identical to that disclosed and/or claimed but for the explicit recitation of the claimed modulus) for one to conclude that the materials of the zones as taught by Kline et al inherently include the same flexure modulus as that claimed when tested similarly. In any case, the Examiner's second position, the teachings of Kline/Batrell teach the general conditions of the claim, i.e. multiple properties, engaging, nonabrasive, materials are not the same, materials having a flexure modulus (all materials have a flexure modulus). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention made to employ a first material of the claimed flexure modulus and a second material of the claimed flexure modulus since it has been held that where the general conditions of a claim are disclosed, as here, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claim 2: It is noted that the longitudinal directions of the fastener and the article are not required to be parallel. Note, again, Figure 7, col. 16, lines 30-62, col. 17, line 14- col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17-19, i.e. the zone 253 or a portion thereof and an equal and

Art Unit: 3761

adjacent portion of zone 254 can include the engaging component 202 and such zone 253 or portion thereof and equal portion of zone 254 define the fastener area. Attention is again invited to the discussion of the scope of the language of the second full paragraph of claim 1 supra.

Claim 9: See col. 17, lines 62-63, and lines 32-37 of Kline, and thereby col. 8, lines 40-41 of Battrell '527.

Claim 10: See col. 17, lines 32-37 of Kline, and thereby col. 8, lines 30-56 of Battrell '527.

Claim 15: See Figure 3 of Kline.

Claim 16: See, e.g., col. 21, lines 5-16 and Figure 2 and col. 12, lines 26-29 of Kline, i.e. the landing member would be identical to the fastener of claim 1, discussed supra, and thus would engage the engaging component of the rear waist region.

Claim 17: See, e.g., Figures 2, 3 and 7.

Response to Arguments

10. Applicants remarks with regard to the informal matters have been noted but are either deemed moot in that they have not been repeated or are deemed not persuasive for the reasons set forth supra. With regard to the remainder of the arguments with regard to the claim language interpretation and the prior art, such arguments have been considered but are deemed not persuasive because such arguments are narrower than the definition of the terminology clearly set forth in the specification and/or the claim language and/or the teachings of the prior art. For example, while the terminology "prefastened" as set forth by the specification can include forming the configuration during manufacture, it is not limited thereto by the

Art Unit: 3761

specification or claim language because nowhere is such explicitly set forth, and while it is disclosed that such configuration is provided prior to application, prior to application does not require only during manufacture, i.e. broadest not most specific interpretation is given where as here there is no explicit definition provided, i.e. compare to the explicit definition provided for “disposable”, and the specification describes the terminology invention such that more than one interpretation is possible. Likewise, other portions of the specification relied upon by Applicants in their arguments with regard to other definitions do not explicitly describe the contended term is limited to that as argued. Nor does the claim language set forth the terms as argued by Applicants, e.g. the claims do not require the claimed multiple properties being fastening related or what they are limited to, Table 31 does not define what the terminology “oversized” is as argued by Applicant, i.e. is it at least 58mm, or at least 32 mm, between these two? With respect to the prior art rejection, attention is reinvited to the rejection supra.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted that Goulait '498, already of record, as well as Thomas '415, now of record, teach that it is known that skin friendly fastening material is based on various factors including prong density, shape, composition of substrate, composition of prong. Likewise, Arsenault et al teaches that the flexure modulus or stiffness is related to the diameter, height and material of the fasteners. Tachauer teaches mechanical fasteners for diapers having portions with different properties of softness and flexibility. The Kampfer and Celliers references also teach mechanical fasteners with various properties due to various factors.

Art Unit: 3761

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
August 24, 2005